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Subject: WRAL: How 'North Carolina' got erased from Atlantic Coast Pipeline fund

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March 4, 2018

By Travis Fain

Over six weeks of negotiation, a deal to bring \$57.8 million to North Carolina as part of the Atlantic Coast Pipeline project morphed from an agreement between the pipeline partnership and the state to a deal between the partnership and Gov. Roy Cooper.

Draft versions of the memorandum of understanding laying out terms for the mitigation fund show changes handwritten in the margins by William McKinney, Cooper's in-house attorney, as the deal was worked up in December and January.

Instead of the money flowing to the state, it would go into an escrow fund designated by the governor. Repeated references to "the state of North Carolina" were edited to "the governor of of the state of North Carolina."

The reason? Cooper and his administration don't trust the Republican-controlled General Assembly.

The feeling is mutual. After the fund was announced, the Republican majority [moved quickly to pass legislation](#) rerouting the promised money to schools along the pipeline route instead of leaving it to Cooper and a still-unwritten executive order contemplated in the memorandum to lay out rules for doling out the money.

Republican leaders called the administration's agreement "a slush fund" created outside the treasury to circumvent their power of the purse.

"I think that their subsequent actions bore out why we didn't want to involve the legislature," said Ken Eudy, Cooper's senior adviser and the administration's point man for talks with Duke Energy and other companies partnering on the pipeline.

Cooper has since said he never intended to decide how the fund would be spent and that his executive order would have given authority to a board made up at least partly by experts. Much of the money would have been used to help companies and farmers in eastern North Carolina hook into distribution lines tied back to the pipeline, covering the cost of expensive last-mile infrastructure that has to be built before gas can flow, the administration has said.

Some of the money would have been used for environmental mitigation along the route and for renewable energy projects nearby. The administration hoped these inclusions would help assuage environmentalists opposed to the pipeline, but it was the economic development aspect that highly connected leaders in eastern North Carolina discussed with Duke for months before the administration hammered out the fund's basics.

Eudy said last week that the administration team "had it in our heads" how the fund would actually work. But officials didn't put the board of experts, or other details, in writing. Their pitch boiled down to "trust us" as Republicans pointed to a memorandum of understanding giving the governor total control of the fund.

That the mitigation fund was announced the same day as a key state permit approval for the project also raised questions of a quid pro quo, which Cooper and his team have repeatedly denied.

"In hindsight, we should have had more structure in the process," Cooper said last week. "Clearly, we were going to put that structure in place when the fund arrived, but remember, we're talking about a fund that hasn't even been funded yet."

Eudy sat with WRAL News last week to answer questions about how the fund was negotiated, questions the administration has declined in some cases to answer for GOP legislators who have used the fund as a political battering ram against the Democratic governor.

The Cooper administration also provided WRAL News with [early drafts of the memorandum of understanding](#) creating the fund, something GOP leaders asked for in two separate letters but have not received. Republican leaders have hinted they may eventually subpoena administration officials to testify about the pipeline fund.

"We think the next step should involve Gov. Cooper being transparent," Shelley Carver, spokeswoman for Senate President Pro Tem Phil Berger, said in an email Friday. "But if he continues to refuse, our members take their oversight responsibility seriously and are evaluating appropriate next steps to obtain this information."

The Governor's Office has cast GOP questioning as an effort to score cheap political points.

"It is really rich to be lectured about transparency by Phil Berger," Eudy said.

An eastern NC push for money

Representatives from Duke and Dominion Energy, key players on the pipeline, visited Cooper soon after his inauguration, according to Eudy.

Later, they asked the governor to sign a letter of support to the Federal Energy Regulatory Commission, which holds ultimate approval authority on the pipeline project, which runs 600 miles from West Virginia to southeastern North Carolina. Cooper resisted, Eudy said, noting the governor had his own letter drafted instead, but it was never sent because he wasn't fully comfortable with it.

Durwood Stephenson, a developer and a former member of the North Carolina Board of Transportation, said he couldn't predict for much of 2017 whether Cooper would back the project or not. The pipeline promised jobs for eastern North Carolina, though, something that may have tugged at the governor's Nash County roots.

"He told me repeatedly, 'We're looking at it, and I know that it's something eastern North Carolina needs,'" Stephenson said.

Stephenson, Norris Tolson and Larry Wooten, the president of the North Carolina Farm Bureau, had been talking to Duke's North Carolina president, David Fountain, about the pipeline for months.

Stephenson is now director of the U.S. 70 Corridor Commission. Tolson, a former legislator who headed three separate cabinet departments under former Govs. Jim Hunt and Mike Easley, is president and chief executive of the Carolinas Gateway Partnership, an economic development organization that covers Nash and Edgecombe counties.

Both men had heard from companies unwilling to consider eastern North Carolina manufacturing sites without easy access to natural gas, and the Atlantic Coast Pipeline planned only three taps along the project's 200-mile route through the state. It could cost millions to run lines to potential industrial sites, where natural gas is not only used for energy but also as a feed stock for products such as fertilizer and plastics.

Likewise, farmers use gas for heat, to cure tobacco and sweet potatoes and to keep pigs, chickens and greenhouses warm. Without natural gas, farmers turn to more expensive propane, putting operations without access to the pipeline at a disadvantage, Wooten said.

Cooper's Department of Commerce was focused on the same issue, reaching out to the pipeline companies for assurances that businesses near the route could access the gas, according to emails released through a public records request and detailed in January [by the Triangle Business Journal](#).

North Carolinians were seeing pipeline commercials touting the promises that the project would bring new jobs to eastern North Carolina, but Cooper and others close to him "were just increasingly skeptical" of the claims, Eudy said. The pipeline folks had asked Stephenson, Tolson and Wooten for support, and they got it. But the trio wanted millions to help small and medium-sized businesses access the gas. Stephenson said the ask was \$100 million. Fountain eventually agreed to something in the ballpark of \$50 million to \$60 million, he said.

It was the Governor's Office that hammered out details, though, Wooten said.

"I knew they were talking," Wooten said last week. "Didn't have any idea who was going to control (the fund)."

Stephenson said he and Tolson eventually met with Secretary of Environmental Quality Michael Regan, whose department was in the midst of the environmental reviews that would eventually lead to approved permits for the project.

"Know you've got to do your homework," Stephenson said he told Regan. "But this is something we really need."

Cooper pushes solar with Duke

Cooper met one-on-one after Thanksgiving with Lynn Good, Duke's chairman, president and chief executive officer, Eudy said.

Duke, Dominion, Southern Company and Piedmont Natural Gas are the four energy companies partnering on the line.

Cooper shared his concerns over the reality of job promises versus the rosy pictures painted in the pro-pipeline commercials, Eudy said. He also pushed for more solar power development, part of a campaign promise to boost the state's renewable energy base, and for movement in negotiations the administration brokered between Duke and the solar industry over House Bill 589.

The legislation was supposed to boost solar power in North Carolina, but it hadn't been fully implemented due to a dispute over the terms Duke was required to abide by in tying various solar projects into its electrical grid.

Throughout the meeting with Good, Eudy said, Cooper stressed that DEQ would decide the pipeline permit and that, other than updates on the process, he was "not enmeshed in the weeds of this permitting process."

By mid-December, DEQ's review was wrapping up, and it had become clear the department would likely issue the needed permit, Eudy said. He recalled Regan saying that, if the consortium answered the department's final questions to satisfaction, there would be "no choice" under the law but to give approval.

The memorandum is written

The memorandum itself started to come together in early December when Eudy and Kathy Hawkins, a Duke lobbyist and executive, met to discuss options for funding gas hookups.

Hawkins delivered a draft memorandum that Eudy said was based on an agreement being negotiated with Virginia, which the pipeline will also traverse. The payout would be \$55 million.

That agreement is with the Commonwealth of Virginia, and it lays out more details about how the money will be spent than North Carolina's memorandum. Then Virginia Secretary of Natural Resources Molly Ward signed that agreement in late December.

North Carolina's draft was marked up by McKinney, retyped and sent back to pipeline officials. Among the early changes:

- The agreement would be with "the state of North Carolina by and through the office of the governor" instead of just with the state.
- Instead of a \$55 million payment due before the pipeline goes into service, half the money would be paid as soon as the Federal Energy Regulatory Commission issued a final notice to proceed on the project; the other half would be due no later than when the pipeline goes into service.
- The money would still go "to the state of North Carolina," but the Governor's Office added language allowing him to designate an account outside the state treasury to hold the money. Language was also added making clear that a future executive order would determine how the money was allocated.
- New language making it clear that the agreement wouldn't stop the state from suing the pipeline over spills and leaks.
- McKinney's name was added at the bottom of the memo, making it clear that he would sign off on the agreement for the state.

The pipeline partnership quickly agreed to these changes, returning the edited memorandum to the Governor's Office already signed by Leslie Hartz, vice president for pipeline construction at Dominion, and dated Dec. 29. Cooper said last week that the decision to leave the details up to a future executive order was "made collectively."

"It was the idea of making sure that we crossed all the t's and dotted all the i's and looked carefully at what this fund needed to do and the process of how it was going to operate with strong conflicts-of-interest checks and making sure that it was exactly what we needed to get the job done," he said.

Several other changes would be made between then and the final signings, dated Jan. 25. When Virginia's agreement became public, it was for \$57.85 million. Cooper's office asked for a boost to North Carolina's fund and got it, to \$57.8 million.

The administration also went back and forth on other tweaks intended to make clear that the agreement would be with the Governor's Office and not the state at large. The "by and through the office of the governor" language at the top of the agreement was changed to "by and between Roy Cooper, governor of North Carolina in his official capacity."

Eventually, language stating that the money would be provided "to the state of North Carolina" was simply dropped, leaving a reference to the escrow fund in place.

DEQ would later [set Jan. 26 as the day to announce the permit](#). Cooper met two days earlier with environmental groups that he knew would be upset, and he wanted to have the mitigation fund to point to, as well as a deal on House Bill 589's solar energy components, Eudy said. The mitigation agreement wouldn't just be for economic development, with the memorandum promising some money for environmental mitigation and to fund renewable energy projects along the pipeline route.

Duke [announced an agreement on House Bill 589](#) shortly after the pipeline permit was official. The Cooper administration announced the mitigation fund on the same day DEQ announced the permit.

What's next?

The legislature voted to take any money that flows into the mitigation fund and split it up among school systems in the eight North Carolina counties along the pipeline route instead of spending it as Cooper envisioned.

Legislation can be undone by legislation, so this could still change. Berger didn't shut the door on that possibility during a recent press conference about the fund, and Stephenson said he's talked to "an awful lot of General Assembly members from the east" who share his concerns about access to the gas.

Stephenson said he and Tolson will deliver a potential plan to legislators this week. There's been a lot of discussion of a revolving fund, with a board deciding on projects, similar to the state's Clean Water Management Trust Fund, Stephenson said. It's possible half of the pipeline fund could go to schools and half to the revolving fund, but that won't be enough, he said.

"We're asking (the legislature) to put up the balance," he said.

Cooper and his team have said several times that [the legislature's decision endangers the fund](#), noting that the pipeline group has no obligation to pay this money into school systems, just an agreement to provide money for economic development, environmental mitigation and renewable energy projects. The governor has acknowledged, though, that he hasn't heard any threat from Duke or other pipeline partners to withhold the money.

Left unsaid by the administration, at least publicly: Changing where the money goes could change whether Duke and other energy companies involved in the pipeline can raise customer rates to recover this \$57.8 million. Regulated utilities can recover reasonable construction costs with approval by the North Carolina Utilities Commission.

FERC also has say over this issue when it comes to the pipeline project.

In North Carolina, costs can be passed along to customers if the appointed commission decides they're reasonable and necessary for service. Would a payment to schools qualify?

WRAL News consulted several experts, including the head of the state's Public Staff, an organization that argues on behalf of ratepayers when Duke goes before the Utilities Commission seeking rate increases.

"Unfortunately, I don't really have a good answer for you," Public Staff Executive Director Chris Ayers said. "There's too many unknowns."

Spokespeople for Duke and Dominion declined to answer the question, saying only "the state determines how to administer those funds." They've stopped short of promising that the money will flow if it's spent on schools instead of on the sort of projects described in the memorandum.

Eudy said the administration hasn't discussed this issue with the pipeline partnership since the legislature moved the money.

"It think that's the legislature's problem," he said.

Wooten said he's tried to stay out of the politics as the General Assembly battles the Cooper administration over the fund. He said he's spoken to House Rules Chairman David Lewis, who has a farm in Harnett County, and found him willing to listen.

"The need is still there," Wooten said. "This political controversy is not serving the people."